

**REMARKS**

The Office Action dated July 27, 2005 has been carefully considered

With regard to the claim objections, claims 11, 27, 40, 47, and 79 have been amended in a manner which is believed to remove the basis for the Examiner's objections.

Claims 11, 14, 15, 27, 28, 40, 42, 47, 48, 51, 56-62 and 79 have been rejected as anticipated by Green EP 0774237 and claims 29-31, 41, 49 and 50 have been rejected as obvious over that reference. Applicant hereby submits the above claim amendments, wherein independent claims 11, 27, 40, 47, and 79 have been amended to include a selectively expandable locator element. Applicant believes that the claims as amended are allowable over the art cited for the reasons presented below.

Applicant hereby acknowledges that claims 21-26 and 63-78 are in condition for allowance as indicated in the above-reference Office Action.

**Claim Rejections**

Claims 11, 14, 15, 27, 28, 40, 42, 47, 48, 51, 56-62 and 79 have been rejected as anticipated by Green EP 0774237 and claims 29-31, 41, 49 and 50 have been rejected as obvious over that reference. It is respectfully submitted that the rejected claims are neither anticipated by nor obvious over the Green reference. Before turning to the claims themselves, it is believed important to point out that the device of the Green patent:

1. Green fails to teach a locator member having a *selectively expandable* deflectable element that is configured to buckle. Rather, the locator element (60) of Green is a two-pronged element which is held under constraint by cannula 100. The locator element (60) of Green is

constructed of a shape memory alloy, wherein the distal end (62b,64b) of the locator element (60) is heat set to have a substantially looped profile as shown in Figure 10 of Green (See Green, Paragraph 0022). Because the profile of the locator is Green is heat set, the locator is not selectively expandable, in fact, the user has no control over the expansion of the locator once constraint is removed from the locator.

2. When the locator member (60) of Green is pushed distally, the constraint is removed and the locator member expands. As specified in Green:

“Locator 60 includes a pair of locator arms 62 and 64 which are constructed from a resilient material that preferably displays *shape memory* characteristics.....When engaged and situated in a relaxed unstressed condition, resilient expansion portions 62b and 64b form an endless loop-like structure.” (See Green, Paragraph 0022, lines 13-16, and 25-30)

Independent Claim 11 is an apparatus claim, which recites that the locator is selectively expandable. It is respectfully submitted that the expansion of the locator element of 60 of Green when its constraint is removed cannot be properly characterized as being selectively expandable, in contrast, the expansion of the locator of Green cannot be controlled by the user, instead the locator is heat set in an expanded condition and then constrained within the cannula 100. As claimed in the present application, the locator is selectively expandable by the user; this is a precise opposite of the removal of constraint in which shape change is caused by the removal of

force rather than the application of force. Thus, it is respectfully submitted that claim 11 is patentable over Green for this reason alone.

**Claim 27**

Claim 27 which recites the steps of:

“providing a selectively expandable locator member coupled to the elongate member such that a distal portion of the locator member extends distally beyond the distal end of the elongate member; buckling a deflectable element on the distal portion of the selectively expandable locator member from an axial collapsed configuration to a transverse expanded configuration;”

As described above, Green fails to teach a locating device that is selectively expandable in use. The locator (60) of Green is configured to be passively expanded, that is, the locator (60) is pre-formed having a loop-like structure which the user cannot control the size of or the rate of expansion of unlike the locator of the present invention.

**Claim 40**

Independent claim 40 has been amended to recite a method, wherein the method includes the step of a selectively deformable locator assembly. As previously discussed Green fails to disclose a locator that is selectively deformable and therefore does not teach the present invention.

**Claim 47**

Independent claim 47 has been amended to recite a method, wherein the method includes the step of a selectively deformable locator assembly. As previously discussed Green fails to disclose a locator that is selectively deformable and therefore does not teach the present invention.

#### **Claim 79**

Independent claim 79 has been amended to recite a method, wherein the method includes the step of a selectively deformable locator assembly. As previously discussed Green fails to disclose a locator that is selectively deformable and therefore does not teach the present invention.

#### **Claim Objections**

Claims 29-31, 41, 49 and 50 were rejected under 35 U.S.C. §103(a) as being unpatentable over Green.

Applicant believes that the amendments to the claims presented above, hereby place the independent claims from which the above-identified dependent claims depend from in condition for allowance for the reasons previously presented.

#### **Summary**

Applicant believes that there is a fundamental difference between the present application and the invention of the Green, which is that the actuation of the locator device of the present invention is accomplished by applying force to selectively deform a deformable member to form a locator device, whereas actuation of the locator device of Green is caused by the removal of a

constraining force. Thus, Green cannot anticipate any of the claims in this application and there is absolutely no disclosure or suggestion in Green in applying a force to cause selective deformation of the locator mechanism. Just the opposite, Green teaches away from applying force by disclosing the use of the removal of force and nothing else. Thus, none of the claims in the present application can be considered obvious in view of Green.

It is believed that this application is now in condition for allowance. A favorable action is respectfully solicited.

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Respectfully submitted,



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